

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 06-CR-264

-vs-

BALDOMERO CASTILLO,

Defendant.

DECISION AND ORDER

The defendant, Baldomero Castillo (“Castillo”), moves this Court for dismissal of all counts filed against him based on the misconduct of the prosecutor. The offered prosecutorial misconduct revolves around the government’s engagement in conduct or activity designed to provoke Castillo into moving for a mistrial, thereby denying Castillo’s rights under the double jeopardy clause of the Constitution. Castillo relies upon *Oregon v. Kennedy*, 456 U.S. 667, 72 L.Ed. 2d 416, 102 S. Ct. 2083 (1982). Castillo must show two things to succeed on his motion. First, he must show prosecutorial misconduct and second that said conduct was engaged in to save a government case that was not proceeding favorably for the government. It must be shown that the government intended to subvert the protections guaranteed by the Double Jeopardy Clause. To resolve those contentions Castillo requests an evidentiary hearing.

First no evidentiary hearing is necessary. Second, no evidentiary hearing is necessary because the Court viewed the evidence against Castillo as strong up to the point

of the witness miscue. Finally, the Court's conclusion that the evidence was and is strong against Castillo prevents it from finding that the government's case was bound for failure. This in turn, prevents the Court from concluding that the government engaged in conduct designed to provoke the mistrial.

Castillo's motion to dismiss the case against him in the above-captioned case is DENIED.

Dated at Milwaukee, Wisconsin, this 14th day of December, 2007.

SO ORDERED,

s/ Rudolph T. Randa
HON. RUDOLPH T. RANDA
Chief Judge